IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.Rev.Pet.No. 4079 of 2006(D)

CRA.266/2005 of ADDL. SESSIONS COURT, THRISSUR
CC.1451/2001 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED:

JOHNY, S/O.PAILY, AGED 62 YEARS,
EDAKULATHUR HOUSE, PONNORE P.O.,
THRISSUR DISTRICT.

BY ADV. SRI.RANJITH XAVIER
SRI.C.D.DILEEP

RESPONDENTS: COMPLAINANTS:

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1. M/S.PREETHI TRADERS,
PONNORE DESOM, EDAKULATHUR VILLAGE,
THRISSUR TALUK, REPRESENTED BY
MANAGING PARTNER LONAPPAN, S/O.KANNANAYKKAL
CHAKKUNNU, PONNORE DESOM.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR
SRI.P.V.CHANDRAMOHAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 4079 OF 2006 D

Dated this the 10th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.1451/2001 on the file of the J.F.C.M.-III, Thrissur challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. The learned counsel for the petitioner argued that the amount covered by the two civil decrees is only Rs.75,000/- (Rupees seventy five thousand only) whereas the amount covered by Ext.P1 cheque is Rs.98,000/- (Rupees ninety eight thousand only) for which the explanation offered is that it represents the principal amount together with interest. This version of the complainant examined as PW1 cannot be accepted. He has admitted that he maintains the personal ledger of the accused and has confessed that the said ledger has not been carried over which means that the amount stated to be due under the loan transactions cannot be accepted. This, in the light of the decision reported in ***M.S. Narayana Menon Vs. State of Kerala*** [2006 (6) SCC 39], is sufficient to rebut the presumption.

4. I am afraid that I cannot agree with the above submission. Both the courts below have concurrently accepted the case of the complainant that the cheque amount represents the decree debt obtained by the complainant in two civil suits instituted against the revision petitioner. The principal amount in one suit is Rs.50,500/- (Rupees fifty thousand and five hundred

only) and the principal amount in the other suit is Rs.24,500/- (Rupees twenty four thousand and five hundred only). Adding together the costs awarded by the civil court, the total amount comes to Rs.84,064/- (Rupees eighty four thousand and sixty four only) as per the decree passed on 16.1.1999. The cheque was issued on 10.5.01 and interest had accrued till then. That explains the higher amount covered by the cheque. The conclusion reached by the courts below is on a careful evaluation of the oral and documentary evidence in the case and this court, sitting in the rarefied revisional jurisdiction, will be loathe to interfere with the conviction recorded by the courts below. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

5. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence

imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.98,000/- (Rupees ninety eight thousand only) within five months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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